



State of New Hampshire

PUBLIC EMPLOYEE LABOR RELATIONS BOARD

HAMPTON POLICE ASSOCIATION, INC:

Complainant

v.

TOWN OF HAMPTON

Petitioner

CASE NO. P-0719:9

DECISION NO. 92-133

APPEARANCES

Representing Hampton Police Association:

J. Joseph McKittrick, Esq., Counsel

Representing Town of Hampton:

Renny Perry, Consultant

Also Appearing:

John J. Nickerson
William L. Wrenn
Robert E. Mark
Daniel Florent

BACKGROUND

The Hampton Police Association (Association) filed unfair labor practice (ULP) charges against the Town of Hampton (Town) on February 27, 1992 alleging violations of RSA 273-A:5 I (a), (b), (e), (g), (h) and (i) resulting from the unilateral implementation of an Internal Affairs Investigation section without prior negotiation as to operation or impact. The Town denied the commission of any unfair labor practice in its answer filed March 12, 1992. This matter was heard by the Board on June 4, 1992.

FINDINGS OF FACT

1. The Town of Hampton is a public employer, as defined by RSA 273-A:1 X, of employees of its police department.
2. The Hampton Police Association is the duly certified bargaining agent of employees of the Hampton Police Department who are pursuing the complaint.
3. The Town and the Association are currently parties to a collective bargaining agreement (CBA) which expires March 31, 1993, continuing year to year thereafter unless notice to cancel is given. The CBA contains a management rights clause Article IV of that CBA is entitled "Management Rights" and reads:

"The Association recognizes the prerogative of Management to operate and manage its affairs in all respects in accordance with existing laws and regulations of the appropriate authorities, including municipal personnel policies and work rules. The prerogative or authority which Management has not officially abridges, delegated or modified by this Agreement are retained by Management, such as, but not limited to: (1) the functions, programs and methods of the public employer, (2) the use of technology and the public employer's organizational structure, (3) the selection, direction and number of personnel so as to continue public control of government, (4) budgetary considerations [and] (5) departmental and managerial policies."

4. Internal to the police department there is a Police Executive Research Forum (PERF) consisting of Deputy Chief Wrenn, one captain, two sergeants, one patrolman, the union president (a patrolman) and two civilians. The PERF recommended that the department adopt an internal investigation (internal affairs) process which would replace General Order 77-17 last updated in 1983. Item 2 of the PERF report recommended the creation of an internal investigations section staffed by a sergeant who would report directly to the Chief of Police. The position of "sergeant" is included in the bargaining unit.
5. The issue of the establishment of an internal investigations section and its being staffed by bargaining unit personnel became known to the

Association when two officers were sent to internal affairs school in November of 1991 and notice was given that they would be involved in internal investigations once graduated.

6. Policy Number 52.1 on the subject of "Internal Affairs" was promulgated by the Town with an effective date of February 1, 1992, to supersede General Order 77-17. Notwithstanding that effective date, the internal investigations policy was implemented in December of 1991 when the two officers, who are unit members and who had graduated from their special training, conducted an investigation of another officer.
7. Once this organizational change establishing the internal investigations section was implemented, the Association requested bargaining over that change by letters of January 27, 1992 and February 6, 1992. There have subsequently been meetings explaining the policy and training about it. Notwithstanding modifications which have been made to Policy No. 52.1 by Policy 52.2, these changes have not addressed all concerns raised by the association (e.g., anonymous complaints being handled contrary to CBA Article V, Section 3; impact on working conditions; short shifts; violation of a prior grievance settlement dating to 1980; and changes in past practice).
8. Prior to the attendance of the two officers who are unit members at the internal affairs course such investigations were conducted by non-unit personnel (i.e., the Chief, a Deputy Chief or a Captain) during the period 1980-1991.
9. Reports of internal investigations personnel are recommendatory in nature, are reviewed by bureau commanders, and are finalized by the Chief of Police.

DECISION AND ORDER

The right to change the department's organizational structure is reserved to the public employer, in this case the Town, both in the statute (RSA 273-A:1 XI) and by contract (Article IV). The Town has, both the responsibility and obligation to insure that it has an effectively run police department. If the creation of an internal affairs division is a requirement or prerequisite to insuring that the Town does have an effectively run police department, then the Town has the right to create and implement such a division without being guilty of an unfair labor practice.

This Board does not accept the argument that bargaining unit members cannot also perform the functions of internal investigations. These investigations are performed on an "as needed" basis and cannot be equated to periodic personnel evaluations. Internal investigations are a common duty of police officers, especially in larger departments. Given that unit members merely investigate and make recommendations which are then reviewed by commanders and finalized by the Chief and Town Manager, they are not supervisors making decisions which exhibit "the significant exercise of discretion" as contemplated in RSA 273-A:8 II. To hold this to be the case or to exclude external affairs officers from bargaining because of job function would be contrary to the intention of Chapter 273-A:1, "Statement of Policy." Further, it would create unnecessary complications when or if officers rotate on and off from internal affairs assignments.

Finally, this Board finds no evidence that this creation of an internal affairs division has had any impact or adverse affects on the administration of the employee organization or the rights of bargaining unit members as protected by Chapter 273-A. Likewise, there has been no violation of the parties' obligations, to the extent they may exist, resulting from past practices. (Article IV)

For the foregoing reasons, the unfair labor practice charges are DISMISSED.

So ordered.

Signed this 27th day of October, 1992.


EDWARD J. HASELTINE
Chairman

By unanimous vote. Chairman Edward J. Haseltine presiding.
Members Seymour Osman and E. Vincent Hall present and voting.